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SENATE BILL 2809
By Finney

AN ACT to amend Tennessee Code Annotated, Title 54,
Chapter 8, relative to county roads.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 54, Chapter 8, is amended by adding Sections 2 through 15 as a new, appropriately designated part.

SECTION 2. As used in this part, "public utility" means utilities owned, operated, or maintained by every gas company, electrical company, and telephone company, whether or not such company is privately owned or owned by a governmental entity.

SECTION 3. Notwithstanding the provisions of §54-8-102(b) or any other general law to the contrary, when a county road or any part thereof is considered useless, the county legislative body of the county in which the road is located may, by resolution entered upon its minutes, declare its intention to vacate and abandon the road or any portion thereof and shall direct the county road commissioner of the road district in which the road is located to report upon such vacation and abandonment.

SECTION 4. Owners of the majority of the frontage on any county road or portion thereof may petition the county legislative body to vacate and abandon the same or any portion thereof. The petition must show the land owned by each petitioner and set forth that such county road is useless as part of the county road system and that the public will be benefited by its vacation and abandonment. The legislative body may:

(1) Require the petitioners to make an appropriate cash deposit or furnish an appropriate bond against which all costs and expenses incurred in the examination, report, and proceedings pertaining to the petition shall be charged;

(2) By ordinance or resolution, require the petitioners to pay a fee adequate to cover such costs and expenses; or

(3) On the filing of the petition and bond and on being satisfied that the petition has been signed by petitioners residing in the vicinity of the county road or portion thereof, the legislative body shall direct the county road commissioner of the road district in which the road is located to report upon such vacation and abandonment.

SECTION 5. When directed by the county legislative body the county road commissioner of the road district in which the road is located shall, in addition to filing a cost bill, examine any county road or portion thereof proposed to be vacated and abandoned and report:

(1) The commissioner's opinion as to whether the county road should be vacated and abandoned;

(2) Whether such road is in use or has been in use;

(3) The condition of the road;

(4) Whether the road will be advisable to preserve it for the county road system in the future;

(5) Whether the public will be benefited by the vacation and abandonment; and

(6) All other facts, matters, and things which will be of importance to the county legislative body.

SECTION 6. Notice of hearing upon the report for vacation and abandonment of a county road shall be published at least once a week for two (2) consecutive weeks preceding the date set for the hearing in the county official newspaper, and a copy of the notice shall be posted for at least twenty (20) days preceding the date fixed for hearing at each terminus of the county road or portion thereof proposed to be vacated or abandoned.

SECTION 7. On the day set for the hearing, the county legislative body shall proceed to consider the report of the road commissioner, together with any evidence for or objection against

such vacation and abandonment. If the county road is found useful as a part of the county road system it shall not be vacated, but if it is not useful and the public will be benefited by the vacation, the county legislative body may vacate the road or any portion thereof. Its decision shall be entered in the minutes of the hearing.

SECTION 8. If the county legislative body has required the petitioners to make a cash deposit or furnish a bond, upon completion of the hearing, it shall certify all costs and expenses incurred in the proceedings to the county trustee and, regardless of its final decision, the county legislative body shall recover all such costs and expenses from the bond or cash deposit and release any balance to the petitioners.

SECTION 9. No county road shall be vacated and abandoned except by majority vote of the county legislative body properly entered, or by operation of law, or judgment of a court of competent jurisdiction.

SECTION 10. Any county road, or part thereof, which remains unopen for public use for a period of five (5) years after the order is made or authority granted for opening it, shall be thereby vacated, and the authority for building it barred by lapse of time; provided, that this section shall not apply to:

(1) Any highway, road, street, alley, or other public place dedicated as such in any plat, whether the land included in such plat is within or without the limits of an incorporated city or town;

(2) Any land conveyed by deed to the state or to any county, city or town for highways, roads, streets, alleys; or

(3) Other public places.

SECTION 11. A county legislative body may, by ordinance, classify all county roads for which public expenditures were made in the acquisition, improvement or maintenance of such roads, according to the type and amount of expenditures made and the nature of the county's

property interest in the road, and may require persons benefiting from the vacation of county roads within some or all of such classes to compensate the county as a condition precedent to the vacation thereof.

SECTION 12. A county legislative body may, by ordinance, separately classify county roads for which no public expenditures have been made in the acquisition, improvement or maintenance of such roads, according to the nature of the county's property interest in the road; and may require persons benefiting from the vacation of county roads within some or all of such classes to compensate the county as a condition precedent to the vacation thereof.

SECTION 13. Any ordinance adopted pursuant to this part may require that compensation for the vacation of county roads within particular classes shall equal all or a percentage of the appraised value of the vacated road as of the effective date of the vacation. Costs of county appraisals of roads pursuant to such ordinances shall be deemed expenses incurred in vacation proceedings, and shall be paid in the manner as provided in Section 8.

SECTION 14. Whenever a county road or any portion thereof is vacated, the county legislative body may include in the resolution authorizing the vacation a provision that the county retain an easement in respect to the vacated land for the construction, repair, and maintenance of public utilities and services which, at the time the resolution is adopted, are authorized or are physically located on a portion of the land being vacated, provided the legislative body shall not convey such easement to any public utility or other entity or person but may convey a permit or franchise to a public utility to effectuate the intent of this section.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. This act shall take effect January 1, 2007, the public welfare requiring it.

